**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN**

**FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929**

**OP.No. 12316 of 2003(N)**
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**PETITIONERS:**
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1. **BABU G.BABY, MADATHILAZHIKATHU VEEDU VI - II A, NEERAZHI LANE, ULLOOR, MEDICAL COLLEGE PO, THIRUVANANTHAPURAM.**

2. **SHARON BABU, DO. DO. (MINOR)**

3. **ANTON BABU, DO. DO. (MINOR) PETITIONERS 2 AND 3 ARE MINORS REPRESENTED BY THEIR FATHER 1ST PETITIONER.**

**BY ADV. SRI.N.NANDAKUMARA MENON**

**RESPONDENTS:**
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1. **THE NEW INDIA ASSURANCE COMPANY LIMITED, DO I, THIRUVANANTHAPURAM REPRESENTED BY ITS ADMINISTRATIVE OFFICER, G.RAJEEV.**

2. **JOSEPH, ARADHANA, VATTAPPARA P.O., THIRUVANANTHAPURAM.**

3. **R.RAJU, KALLADUNGA, THADATHARIKATHU VEEDU, VATTAPPARA PO, THIRUVANANTHAPURAM.**

**BY ADV. SRI.P.R.RAMACHANDRA MENON**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 06/09/2007, ALONG WITH MAC NO. 1 OF 2007 THE COURT ON 28/09/2007 DELIVERED THE FOLLOWING:**

**tss**

**OP. NO.12316/2003**

**ORDER ON CMP. NO.21016/2003 IN OP. NO.12316/2003**

**DISMISSED**

**28.09.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**EXT.P1:- COPY OF THE AWARD IN OP. (MV) 261/97 OPF MACT, TRIVANDRUM DT. 2.6.2000.**

**EXT.P2:- COPY OF THE MEMORANDUM OF MISCELLANEOUS APPEAL 151/01 FILED BY IST RESPONDENT BEFORE THIS HONOURABLE COURT.**

**EXT.P3:- COPY OF THE COUNTER AFFIDAVIT FILED BY PETITIONERS IN MFA. 151/01 BEFORE THIS HONOURABLE COURT.**

**EXT.P4:- COPY OF THE JUDGMENT DT. 25.9.01 IN MFA 151/01 HIGH COURT OF KERALA.**

**EXT.P5:- COPY OF THE RP. IA. 4750/01 IN OP(MV) 261/97 FILED BY IST RESPONDENT BEFORE MACT TRIVANDRUM.**

**EXT.P6:- COPY OF THE DELAY PETITION IN IA. 4749/2001 FILED BY IST RESPONDENT BEFORE MACT, TRIVANDRUM.**

**EXT.P7:- COPY OF THE OBJECTION FILED BY PETITIONERS IN IA 4750/01 IN OP. (MV)261/97 BEFORE MACT, TRIVANDRUM.**

**EXT.P8:- COPY OF THE OBJECTION FILED BY PETITIONERS IN IA. 4749/01 IN OP.(MV) 261/97 BEFORE MACT TRIVANDRUM.**

**EXT.P9:- COPY OF THE ORDER IN IA. 4749/01 AND 4750/01 IN OP.(MV) 261/97 OF MACT, TRIVANDRUM DT. 19.3.2003.**

**EXT.P10:- COPY OF THE DAIRY IN OP.(MV) NO.261/97 ON YHE FILES OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, THIRUVANANTHAPURAM.**

**EXT.P11:- COPY OF THE B.DAIRY IN IA. NO.4750/01 IN OP.(MV) 261/97 ON THE FILES OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, THIRUVANANTHAPURAM.**

**/TRUE COPY/**

**P.S. TO JUDGE**

**tss**

**THOTTATHIL B. RADHAKRISHNAN, J.**

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**O.P.12316 of 2003-N & M.A.C.1 of 2007-C**

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Dated this the 28th day of September, 2007.

**JUDGMENT**

1. Annie, the mother of petitioners 2 and 3 in the original petition and the wife of the first petitioner therein died on 29-9-1996 in a motor accident. The Motor Accidents Claims Tribunal, Thiruvananthapuram passed an award on 2-6-2000 in favour of the petitioners.

2. M.F.A.151/2001 filed by the insurer of the offending vehicle was disposed of by this Court on 25-9-2001 granting leave to the insurer to withdraw the appeal to seek other remedies. This, apparently, was in the light of the contention of the insurer that the Tribunal had granted it leave under Section 170 of the Motor Vehicles Act, 1988 and the insurer had contested the case on all

points, but the claimants pointed out before the Division Bench that as a matter of fact, there was no order granting leave under Section 170 of the Act.

3. Thereafter, the insurer filed two interlocutory applications before the Tribunal seeking review of the order on the applications stated to have been filed under Section 170 and to condone delay in applying for review. The Tribunal, by order dated 19-3-2003, allowed those applications by holding that I.A.No.1468/2000 filed by the insurer for leave under Section 170 was not considered and disposed of by the Tribunal before it passed the award on 2-6-2000 and that it is seen from the records that I.A.1468/2000 is closed on 13-6-2000 which is after the delivery of the award. On that ground, the application to condone delay was allowed and the award was reviewed and the O.P. re-listed for consideration after recalling the award passed on 2-6-2000.

4. .The aforesaid interlocutory order granting the review after condoning delay is the subject matter of O.P.12316/2003. During the course of arguments in that case, it became necessary to refer to the lower court records. However, the bunch forwarded by the Tribunal did not contain I.A.1468/2000 which was the bone of contentions in the review petition. Awaiting complete transmission of records, the merits of the matter was also considered by me in some depth, on August 1st, 2007.

5. The deceased, aged 39 at the time of her death, was a Nurse in the Medical College Hospital, Thiruvananthapuram. Her salary certificate discloses her last drawn emoluments. In the meanwhile, the Government had also come out with pay revision orders. The life expectancy is not a matter that is much in dispute, going by the appeal memorandum in M.F.A.151/2001 and going by the arguments addressed on the merits of the matter.

6. The real grievance pointed out on behalf of the insurer is that the Tribunal has erroneously applied the ratio of the decision of the Apex Court in **General Manager, K.S.R.T.C., Tvm. v. Susamma Thomas** (AIR 1994 SC 1631), while issuing the award on 2-6-2000 in arriving at the income that could be fixed as reasonable in the case of the deceased. Going by that award, the learned Tribunal has undertaken an exercise of an arithmetic calculation by applying a formula as if it is one deduced by the Apex Court in **Susamma Thomas's case** (supra).

7. The aforesaid facts will show that even if the order on the application for review does not sustain, the award dated 2-6-2000 is a totally unjust award which is so irrational and arbitrary that the fixation cannot escape the clutches of, at least, the supervisory jurisdiction of the superior courts. If the award is to be reconsidered on the basis of the order passed on the review application, sufficient time

having been spent by this Court in hearing the matter also on merits, it would be improper to relegate the minor children and the widower to the Tribunal for re-determination of the case relating to an accident that occurred way back in 1996. Not only that, the insurer does not have a case that it did not have an opportunity to contest on all points. In fact, it is its assertion that it did contest on all points. If that be so, all that requires is that the entire facts and evidence are looked into and an appropriate decision taken, having regard to the contentions in the case.

8. Under the aforesaid circumstances, to render complete justice between the parties and to give a finality for these proceedings, the claim petition, O.P.(MV)No.261/1997 of the Motor Accidents Claims Tribunal, Thiruvananthapuram was withdrawn to this Court, in exercise of authority under Article 227 of the Constitution to be taken and disposed of as an original matter along

with O.P.12316/2003. This is how M.A.C.No.1 of 2007 came to be registered.

9. The material facts and controversies between the parties have already been noticed above. The contentions of the insurer are confined to the quantum of compensation fixed and also regarding the rate of interest.

10. A reading of paragraph 9 of the Award dated 2nd June, 2000, obviously, shows that the Tribunal had erred in law in applying the ratio of Susamma Thomas's case (supra) to the facts of the case in hand. The deceased, at the time of her death, was drawing a total salary of Rs.5,294/-. Ext.A9 is the Government Order dated 25-11-1998 regarding revision of pay scales. The death occurred, following the accident on 29-9-1996. The deceased was aged 39 at the time of her death. Taking such materials into consideration, the monthly income of the deceased can be reasonably fixed at Rs.7,500/-. Reducing the expenditure

therefrom by 1/3rd, the amount of dependency has to be calculated as Rs.5,000/- x 12 x 16 since 16 is the appropriate multiplier. This works out to Rs.9,60,000/-.

11. Having regard to the totality of the facts and circumstances, I am inclined to adopt all the other figures and heads of compensation as are awarded as per the award dated 2-6-2000.

12. On to the question of interest, the reasonable interest payable is only at the rate of 7.5%.

13. In the result, O.P.No.12316/2003 is dismissed. M.A.C.No.1/2007 [O.P.(MV).No.261/1997 of the Motor Accidents Claims Tribunal, Thiruvananthapuram] is allowed in the following terms:

> The petitioners are allowed to recover and release an amount of Rs.10,94,540/- with interest at the

rate of 7.5% from 21-2-1997 till date of realization from the third respondent and its assets with Rs.500/- as costs. The third respondent will send a cheque or demand draft of Rs.19,373/- in favour of the MACT, Thiruvananthapuram towards court fee. The balance amount shall be disbursed equally by cheques in favour of petitioners 1 to 3, petitioners 2 and 3 having attained majority by this time and the accident having occurred in 1996. It is clarified that the award in O.P.No.261/1997 is, in no way, impaired by these proceedings.

**THOTTATHIL B. RADHAKRISHNAN,**
**JUDGE.**

**Sha/-**

**THOTTATHIL B. RADHAKRISHNAN, J.**

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**OP.12316/2003N & MAC.1/2007C**

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**JUDGMENT**

**Dated: 28th September, 2007.**